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## THE JUDICIAL SYSTEM OF THE GERMAN EMPIRE

IN THE German Empire the administration of justice is for the most part left to the states, all the courts being state courts with the exception of the Imperial Court at Leipzig. The Empire has however established unity of the law, has given a uniform organization and procedure to the courts of the states, and has by the creation of the Reichsgericht as the highest court of appeal ensured a uniform interpretation of the law. These three methods of securing a uniform administration of justice will be studied in the order named.

Among the services that the Empire has rendered to Germany none is greater than the codification of the civil and criminal law. In the course of the sixteenth and seventeenth centuries Roman private law made its way into Germany, its reception being largely due to jurists trained for their tasks by the study of foreign law and to the need of a uniform system of law, which the Holy Roman Empire was in no condition to meet. Roman law thus became the common law of Germany, eclipsing local law, which was for the most part customary law. The particular laws of localities and territories took precedence over the law of the Pandects, but in order to prevail their existence had to be proved. In the eighteenth century a reaction began in favor of German law and the states became active in adapting legislation to existing conditions. The disadvantage of competing systems of law and the legislative sterility of the Empire explain the enactment of local codes, of which the most important was the Prussian Landrecht of 1794. Codification by states could however bring only local relief. Germany was now divided into two great areas, the area in which private law had been codified by the states and the area in which the Germanized Roman law supplemented territorial law. A uniform system of law was impossible as long as Germany continued to be a league of states. Only a national state could establish a national law.

The first step in the direction of uniform legislation was taken by the governments of the states belonging to the Customs' Union, which through delegates sent to Leipzig for the purpose drew up in the year 1847 what is known as the Allgemeine Deutsche Wechselordnung, dealing with bills and notes. This code was adopted

by the National Assembly in 1848, but it derives its authority from its subsequent enactment by the several German states. The next step was taken in the year 1862 when the Diet of the Germanic Confederation recommended to the states the enactment of a code of commercial law which had been drawn up by a commission appointed by it for the purpose. This code, known as the Allgemeines Deutches Handelsgesetzbuch, was adopted by nearly all the states in the course of the four years that followed. When the North German Confederation was founded in 1867 its legislative authority was made to include criminal law, judicial procedure, and that part of the civil law known as the law of contracts, the law of exchange, and commercial law. Acting on the authority thus bestowed the North German Confederation in 1869 enacted the Allgemeine Deutsche Wechselordnung and the Allgemeines Handelsgesetzbuch as federal law. This course was made necessary by the fact that the unity which had been gained was on the point of being lost by divergent interpretation. The criminal law was codified in the year 1870. In 1874 the constitution was amended so as to include the entire civil law in the legislative competence of the Empire. The task of codifying the private law of Germany proved, however, so formidable that the Civil Code was not promulgated until 1896, to take effect January 1, 1900. The effect of the legislation above described is that the law administered by the courts both in civil and in criminal cases is, for the most part at least, imperial law.

As has been already pointed out, the right to regulate judicial procedure was bestowed by the constitution upon the Empire. When the question was taken in hand, however, it was seen that uniform procedure involved uniform organization. Accordingly the law known as the Gerichtsverfassungsgesetz preceded by a few days the laws dealing with civil and criminal procedure, being promulgated January 27, 1877. This law prescribes the organization of the state courts: the amtsgericht, corresponding to our court of the justices of the peace; the landesgericht, corresponding to our circuit court; and the oberlandesgericht, answering to our supreme court. It is to be remembered that the courts whose organization is prescribed, whose jurisdiction is assigned, and the qualifications of whose judges are determined, are state courts, with judges appointed by the state and administering justice in the name of the state. It is not to be inferred however that every state has the three kinds of courts mentioned above. A state may make over to

another state part, or the whole, of its judicial authority, or may unite with one or more other states for the joint administration of justice. There are a number of landesgerichte and oberlandesgerichte that are common to two or more states. The small size of some of the states makes such an arrangement necessary. What is known as administrative justice forms an exception to the rule that the jurisdiction of the courts is determined by imperial law. It is left to the states to determine whether redress against the acts of the administration and its officers shall be given in the ordinary tribunals or in courts organized in connection with the administration and hence known as administrative courts. On the continent of Europe governments have shown an unwillingness to submit such questions to the courts of law, partly through fear lest the technical training of the judges should prevent due weight being given to questions of administrative expediency. The law determining the organization of the courts also regulates their relations. The general effect of its provisions on this subject is to do away with the obstacles which state boundaries would otherwise throw in the way of the administration of justice. The relations between the courts, which in this country are largely governed by the rules of private international law, are in Germany regulated by imperial legislation. The Gerichtsverfassungsgesetz was within a few days followed by the Civilprocessordnung and the Strafprocessordnung, by which the procedure of the courts was regulated in civil and criminal cases.

The measures already described would not suffice to secure a uniform administration of justice if the interpretation of federal law were left entirely to state courts. It will be remembered that the law of exchange and commercial law had been made uniform by concurrent state legislation. There was however the greatest danger that this system of law would be broken up into several systems by the conflicting interpretations given to it by state courts. It was to ward off this danger that the North German Confederation in the year 1869 both turned this state law into federal law and created in the Oberhandelsgericht a tribunal charged with the interpretation in last resort of these branches of the law. The services rendered by this court were so great that its jurisdiction was steadily increased until at length, in the year 1877, it was replaced by a court of larger jurisdiction, the Reichsgericht, which, like its predecessor, has its seat at Leipzig. The provisions in regard to the Reichsgericht form part of the Gerichtsverfassungs-

gesetz. The Imperial Court has original jurisdiction in cases of treason against the Empire and appellate jurisdiction is cases where imperial law is involved. Its appellate jurisdiction has grown with the growth of imperial legislation, the most striking instance of which is the codification of the civil law. Since that change took place both the civil and the criminal law of Germany are interpreted in last resort by the Imperial Court.

The law which it is the function of the Imperial Court to interpret is for the most part, but not exclusively, imperial law. The Empire has an interest in preventing the contradictory interpretation even of local law; for were this not done the courts of one state might be called upon to enforce the contradictory judgments of the courts of another state. Such conflicting interpretations would indeed be impossible if in every state in which there are two or more oberlandesgerichte there were also an oberstlandesgericht. It is not, however, in the interest of the Empire that the states should establish courts of higher jurisdiction than the oberlandesgericht. It is thus that the fact is to be explained that even in cases that depend upon state law the Imperial Court is given appellate jurisdiction where the law covers a larger area than the oberlandesgericht from which the appeal comes. The Emperor may, moreover, with the consent of the Federal Council and subject to the subsequent approval of the Reichstag, either narrow or widen this jurisdiction. He may on the one hand decree that the fact that a law has force beyond the limits of an oberlandesgericht shall not give appellate jurisdiction to the Imperial Court. On the other hand he may bestow such appellate jurisdiction even in cases where the law has no force beyond the limits of an oberlandesgericht. The last provision is of especial interest because it has in view cases in which the law, though state law, is common to two or more states and where consequently the unity of the law can be maintained only by giving appellate jurisdiction to the Imperial Court. In view of the facts mentioned above it is easy to understand why German publicists, leaving out the qualification federal or imperial, assert that it is the function of the Imperial Court to give a uniform interpretation to law. State law plays in Germany a much less important role than it does in this country. Moreover, the Imperial Court has in many cases appellate jurisdiction even though imperial law is in no way involved. In the administration of justice, as in certain other respects, Bavaria occupies an exceptional position. The Gerichtsverfassungsgesetz, in establishing

the Reichsgericht, expressly provides that any state in which there are several oberlandesgerichte may establish an oberstlandesgericht and make over to it the appellate jurisdiction in civil causes which the Gerichtsverfassungsgesetz bestows upon the Imperial Court. Excepted however are such civil causes as at that time belonged to the jurisdiction of the Oberhandelsgericht and such other causes as the Empire may by particular laws subject to the jurisdiction of the Reichsgericht. Although the permission to establish an oberstlandesgericht is general in its terms, yet in fact it applies only to Bavaria. Of the states that are large enough to establish two oberlandesgerichte Wuertemberg and Baden have been contented with one. Saxony as the state in which the Reichsgericht has its seat is by law deprived of the privilege of establishing an oberstlandesgericht. The privilege Prussia has expressly renounced, leaving Bavaria the only state to establish an oberstlandesgericht and to bestow upon it part of the appellate jurisdiction which for the rest of the Empire belongs to the Imperial Court. It is to be remembered, however, that in other respects Bavaria is subject to the Gerichtsverfassungsgesetz, and that in criminal cases and in many civil cases, including those that come under the head of commercial law, appeals go from Bavaria to the Reichsgericht.

In the German Empire the courts are not, as they are in this country, the guardians of the constitution. Imperial laws may not be pronounced unconstitutional by the courts. This is indeed the rule in continental Europe, where governments, until recently absolute, are naturally unwilling to allow independent tribunals to pass upon questions involving the extent of their authority. The courts may indeed declare state law unconstitutional, for they could not apply imperial law were they not empowered to sweep aside whatever is inconsistent with it. It is not, however, on the courts that the Empire mainly relies for enforcing its authority against the states. If a state, either by act or omission, violates the constitution or the law of the Empire it is the duty of the Emperor to call the attention of the state government to the illegal act or omission. In case of a difference of opinion between the Emperor and the state government the decision lies with the Federal Council, which is empowered in case of need to decree federal execution against the recalcitrant state. This decree is to be carried out by the Emperor at the head of the army of the Empire. This direct coercive authority is made necessary by the peculiar relation which

in Germany exists between the Empire and the states. Much of the admistration of the states is carried on in accordance with imperial law and under imperial supervision. The control which in such cases the Empire has over the states can not be exercised through the courts, but must be wielded directly by the imperial government. This authority is similar in kind to that which the higher administrative authorities have over their subordinates and hence must include the power to compel obedience to its orders. In a country where the federal government and the states have entirely distinct spheres, the courts may be relied upon to see to it that the one does not encroach upon the functions of the other. The questions that arise in such a case are questions of law. But where the two authorities coöperate in the performance of the same tasks, the one laying down the norm and the other administering in accordance with the norm, the questions that arise are questions of administrative expediency, which must be decided by the authority to which the right of guidance belongs.

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